

Appl. No.: 09/574,595
Amdt. dated May 16, 2005
Reply to Office Action of November 26, 2004

REMARKS

Applicants acknowledge receipt of the Office Action dated November 26, 2004, in which claims 25-40 were withdrawn as subject to a restriction requirement. Claims 1, 3-7, 17, 20 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Wilson* (US Patent 5,864,827) in view of *Cuomo et al.* (US Patent 6,272,539 B1). Claims 2, 8 and 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Wilson* in view of *Cuomo* and further in view of *Grochowski et al.* (US Patent 6,035,389). Claims 18, 19, 21 and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Wilson*, *Cuomo* and *Patterson Jr. et al.* (US Patent 5,915,245). Applicants respectfully traverse the withdrawal and the rejections and request reconsideration in view of the reasons set out below.

I. THE WITHDRAWAL OF CLAIMS 25-40

The examiner issued a restriction requirement, categorizing the claims into three groups: Claims 1-8 and 18-24 (Group I), Claims 25-32 (Group II), and Claims 33-40 (Group III). Applicants respectfully traverse this restriction requirement as improper. Without accepting or disputing the examiner's characterization of the claims groups as related but distinct under MPEP § 806.05(d), applicants note that such reasoning alone is insufficient to sustain a restriction requirement. As indicated in MPEP § 808.02, the examiner *must* also "show by appropriate explanation [at least] one of the following: (A) Separate classification . . . (B) A separate status in the art . . . (C) A different field of search [i.e., when] it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists". The examiner's reasoning assumes without explanation that "the search for Group I is not required for Group II [or Group III]". Action, pages 2-3. Such an unsupported statement does not constitute "appropriate explanation", particularly when it appears to the Applicants that the scope of search would in fact be the same for all groups.

Accordingly, Applicants respectfully request that claims 25-40 be examined in the present application.

II. THE REJECTION OF CLAIMS 1, 3-7, 17, 20, AND 22

The examiner rejects claims 1, 3-7, 17, 20 and 22 as obvious in view of a combination of *Wilson* and *Cuomo*. Applicants respectfully traverse because the cited art fails to provide any

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suggestion or motivation to modify the references in a manner that satisfies the claim limitations.

Claim 1: Claim 1 recites in part "displaying on a device the identity of the first market and the latency for the first market; and displaying the identity of the second market and the latency for the second market." The examiner cites *Wilson*'s Fig. 3; col. 5, lines 19-25; col. 6, lines 22-30 and 44-55; as teaching displaying the market to which a message is sent. OA of 11/26/04 at p. 4. In fact, the cited sections teach a data format for storage in memory and on disk, not a display format. See, e.g., col. 5, lines 27-29. Because *Wilson* concerns an information gateway that provides protocol translation between financial exchanges and customer systems, it is unsurprising that *Wilson* wholly fails to treat the display issue. *Cuomo* also fails to teach displaying multiple markets, and applicants submit that the rejection of independent claim 1 fails for at least this reason.

Moreover, as acknowledged by the examiner, *Wilson* fails to teach displaying a latency for the market. OA of 11/26/04 at pp. 4-5. To address this lack, the examiner cites *Cuomo*, which teaches providing a visual representation of an estimated overall delay associated with a user's communications to a network site. See *Cuomo* abstract. However, the teachings of *Cuomo* are entirely different from that of the invention of claim 1. *Cuomo* does not address the issue of identifying which markets are likely to execute orders more quickly than others. That is, *Cuomo* provides no teaching or suggestion of displaying latencies for different markets, and thus does not allow for any direct comparison of latencies. Rather, the issue that *Cuomo* seeks to address is preventing uneducated users from making mistakes such as multiple electronic submissions. See, e.g., *Cuomo* at col. 7, lines 17-36. In effect, *Cuomo* teaches a system for reducing network congestion and user frustration, not a system that addresses the issues solved by the claimed invention.

Applicant respectfully submits that a combination of *Cuomo* and *Wilson* would not include displaying latencies for two different markets and the identity of those markets. *Wilson* is primarily a translation and recording device, sending a confirmation message to the user only after all the transactions have been completed. It makes no teaching of timing the individual market transactions, either separately or in total. If the teachings of *Cuomo* and *Wilson* were combined, a total transaction request "latency" would be recorded, as taught by *Cuomo*. No

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recording of individual market latencies would be made or displayed with the identity of the corresponding markets. For at least these reasons, applicants maintain that independent claim 1 and its dependent claims 2-8 and 18-24 are allowable over the cited art.

Claim 2: Claim 2 recites in part "latency for a port". The examiner cites *Grochowski* at the abstract and col. 2, lines 19-25, as teaching this limitation. Applicants respectfully traverse, as the latencies and latency vectors as taught by *Grochowski* are defined in a specific way that makes this cite inappropriate to the context of the present application. *Grochowski* concerns the availability of registers in a microprocessor. *Grochowski* defines his use of the term "latency" as follows:

The "actual latency" of a particular instruction depends on whether the particular instruction will write or read the register. If the particular instruction reads the register, the "actual latency" is defined to be the time for earlier instructions of the instruction sequence to perform writes to the register. If the particular instruction will write the register, the "actual latency" is the time for earlier instructions of the instruction sequence to perform writes to and reads of the register.

Grochowski col. 3, lines 15-22. Thus, the latencies taught by *Grochowski* have nothing to do with delays between market messages and market responses, as required by claim 1. Thus one of ordinary skill in the art would find no teaching or suggestion in *Grochowski* of associating such a latency with a port. For at least this additional reason, applicants maintain that claim 2 and its dependent claim 23 are allowable over the cited art.

Claim 8: Claim 8 recites in part "counting the number of messages sent to a market through a port". The examiner cites *Cuomo* Figs. 6A-6C and col. 13, lines 22-42 as teaching this limitation. These cites concern techniques for visually displaying a delay. Applicants can find no teaching here or elsewhere in the cited art of counting the number of messages sent to a market through a port. For at least this additional reason, claim 8 is allowable over the cited art.

Claim 18: Claim 18 recites in part "selecting one of said first and second markets based on said calculations for said first latency and said second latency". The examiner cites *Patterson* col. 9, line 52 – col. 10, line 9, as teaching this limitation. *Patterson* says

By reviewing the status of the various brokers available to the clerk, he or she can

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serially monitor the progress of each of the brokers and can distribute new orders and quote requests to the floor broker that is presently best able to handle additional requests, in the judgment and discretion of the booth clerk. As used herein, 'status' refers to the stage of the transaction, that is, whether a [transaction has been completed].

Id. Applicants respectfully traverse. *Patterson* specifically explains that the basis for distributing orders to brokers is the status of previous orders and the clerk's "discretion". *Patterson* does not here or elsewhere suggest that latency calculations could be the basis for selecting a market. For at least this additional reason, applicants maintain that claim 18 is allowable over the cited art.

III. NEW CLAIMS 25-40

Claim 25 recites a method of selecting a market. Claim 25 notably recites the calculation of two different latencies for two different markets. As explained above, this is not taught or suggested by *Wilson*, *Cuomo*, or a combination of the two.

Claim 26 recites selecting a first market or a second market based upon which is lower, the first latency or the second latency. This is in contrast to the system taught by *Cuomo* in the sense that the purpose of "latency" in the system of *Cuomo* is in order to let the user be patient while waiting, not in order to select from among plural markets. *Cuomo* does not teach the selection of a market based on which corresponding latency is lower.

Claim 27, dependent from claim 26, recites the display of the first and second latencies, along with the display of the identities for the first and second markets.

Claim 33 recites a method of selecting a port connected to a market. The language of claim 33 corresponds largely to the language of claim 25 but rather than reciting the calculation of latencies for markets, claim 33 recites the calculation of latencies for ports attached to a market.

Claim 34 recites selecting a first port or a second port based upon which is lower, the first latency or the second latency. This is in contrast to the system taught by *Cuomo* in the sense that the purpose of "latency" in the system of *Cuomo* is in order to let the user be patient while waiting, not in order to select from among plural ports. *Cuomo* does not teach the selection of a

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port based on which corresponding latency is lower.

Claim 35, dependent from claim 34, recites the display of the first and second latencies, along with the display of the identities for the first and second ports.

Each of the new claims is believed to be allowable.

Appl. No.: 09/574,595
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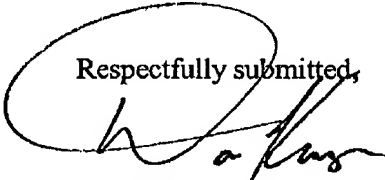
Conclusion

Applicants believe that they have responded to each ground of rejection and therefore respectfully request that the examiner reconsider and withdraw the rejections. If the examiner has any questions or otherwise feels it would be advantageous, he is encouraged to telephone the undersigned at (713) 238-8055.

In the course of the foregoing discussions, applicant may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art which have yet to be raised, but which may be raised in the future.

If any fees are inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Conley Rose, P.C. Deposit Account Number 03-2769/1991-01400/HDJK.

Respectfully submitted,



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